



MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM: William N. Hart
 Acting Deputy Director for Administration

SUBJECT: Impact of Freedom of Information and Privacy
 Acts on CIA Programs (U)

1. This is for your information only. During the third quarter review of the DDCI FY-1980 goals program, you asked that comparative man-year data be provided to you which would show the magnitude of the Agency effort devoted to implementing the Freedom of Information and Privacy Acts and the mandatory review provisions of Executive Order 12065. (U)

2. The following table shows the amount of operational and analytical effort devoted during FY-80 to ten selected targets, expressed in man-years:

<u>Target</u>	<u>DDO</u>	<u>NFAC</u>	<u>Total</u>
USSR (NFAC figure is for efforts against Soviet strategic capabilities, excluding SALT/arms control)	272	148	420
Nuclear Proliferation	27	19	46
Terrorism/Narcotics	37	18	55
Non-Soviet Warsaw Pact	75	7	82
International Economics and Energy (NFAC figure is only for energy)	57	56	113
Latin America (Figure includes 89 work-years effort against Cuba)	152	63	215
Near East/North Africa	89	72	161
Africa	88	51	139
Asia	69	75	144
Afghanistan	4	9	13 (S)

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3. Our reported manpower figures for the same period show that the Agency devoted approximately 130 man-years to processing FOI/PA/EO requests. The reported number of professional man-hours has been almost double the number of clerical man-hours. (U)

4. These figures show that FOI/PA/EO requires a third as much effort as we devote to the USSR, our primary target; almost as much effort as we devote to the Near East, Africa, or Asia; more than half as much effort as we devote to Latin America, including Cuba. One last comparison is that we devote about one-tenth as much manpower resources to administer the Freedom of Information and Privacy Acts and the mandatory review provisions of E.O. 12065 as we devote to all of the intelligence targets cited in paragraph 2 above. (C)

5. Unfortunately, we have not been able to produce any comparisons which are unclassified. Therefore, these figures should not be used in open testimony before the Congress or in speeches given before the general public. (U)

/s/ William N. Hart

William N. Hart

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SUBJECT: Impact of Freedom of Information and Privacy
Acts on CIA Programs (U)

DDA/OIS/IPD: [] (21 Oct 1980)
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This paper has not been seen by any of the issue team members other than [redacted] A copy was given to Ken so that he could check with [redacted] on whether the format was okay. Ken informed me this morning that it would suffice. There will be changes, of course. In fact, I have some of my own to make. Ken does not expect that there will be another EXCOM meeting on this issue. If there is one, Ken said that it would be very brief with only me present.

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SUPPLEMENTARY PLANNING ISSUE REPORT

Management Issue No. 6: What must CIA do to adequately comply with statutory requirements concerning records control, review, and public disclosure without significantly impeding performance of its primary missions.

A. Systematic Classification ReviewDiscussion:

The consensus of the Executive Committee was that the Agency should push for the amendment of Executive Order 12065 to eliminate the 20-year systematic review requirement, as recommended recently by the Government Accounting Office (GAO). To that end, the Office of General Counsel (OGC) should commence preparing an official position for the Agency and sounding out other National Security Council (NSC) member agencies on their stances on this issue. Fallback proposals should be developed for the eventuality that the NSC or the President might find the GAO recommendation unacceptable, such as the exemption of the CIA alone, or at least extension of the period of time for the review of foreign intelligence information from the present 20 years to 50 years.

Once it is clear that the systematic review requirement will be eliminated or modified in such a way as to substantially reduce the Agency's workload, the future staffing needs of the Classification Review Division (CRD) should be reassessed, and, if there are no legal strictures, surplus personnel should be detailed or transferred to FOI/PA staffs within the Agency. The review of the Agency's OSS records, however, should be completed, with the objective of offering these records to the National Archives and Records Service (NARS) for accessioning at the earliest possible date.

If Executive Order 12065 is not amended with respect to the systematic review provision, the additional positions authorized for CRD in FY 1981 should be filled. Efforts should be made, working in close collaboration with NARS, to reduce the review workload through the revision of records control schedules and by gaining approval for certifying the need for retaining the classification of entire series of selected intelligence records in lieu of a document-by-document review.

Proposal No. 1: That OGC be directed to take the lead in ensuring that the NSC consider, and act favorably upon, the GAO recommendation that the provision of Executive Order 12065 requiring the systematic review of permanent, 20-year-old records be eliminated.

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APPROVED: _____
Deputy Director of Central Intelligence

DISAPPROVED: _____
Deputy Director of Central Intelligence

DATE: _____

Proposal No. 2: That when and if the systematic review requirement of Executive Order 12065 is eliminated or substantially modified, and if there are no legal restrictions to preclude such a move, personnel surplus to CRD's future staffing needs be detailed or transferred to FOI/PA work. Review of the OSS records, however, should be completed.

APPROVED: _____
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Deputy Director of Central Intelligence

DATE: _____

Proposal No. 3: That, if there is no change in Executive Order 12065, the new positions approved for CRD for FY 1981 should be filled, and every avenue should be pursued to reduce the number of documents that must be systematically reviewed.

APPROVED: _____
Deputy Director of Central Intelligence

DISAPPROVED: _____
Deputy Director of Central Intelligence

DATE: _____

B. FOI/PA Backlogs

Discussion: The Executive Committee was obviously concerned over the extended period of time required to answer many requests/appeals, and the fact that these delays have led to increased litigation with the Agency. The Committee proposed that we take a hard look at the way in which we process

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requests to determine if changes are in order. Specifically, it was suggested that any superfluous levels of review be eliminated to speed up the process, and that, if OGC approved, consideration be given to establishing a separate queue for projects, i.e., cases involving a fixed, predetermined number of documents, in order that work could proceed on the less complicated requests instead of their being held up by relatively massive requests. The Director made it clear that he wanted the Agency to insist upon requesters providing a reasonable description of the records they seek, as opposed to "fishing expeditions," and, within the limits of the law, to assess fees, when appropriate, to weed out frivolous from serious, scholarly requests.

With respect to appeals processing, the issue was raised of whether it was necessary for OGC to continue its role of preparing response letters. The General Counsel stressed the point that it was essential that the Agency's appeal determinations hold up in court, and that this could be ensured only through participation of OGC in the appeals process. Whether OGC could achieve this objective while acting only in an advisory capacity was not discussed. There seemed to be a consensus in the Committee, however, that the processing of appeals should be expedited, either by the employment of additional paralegal personnel in OGC or by assigning responsibility for preparing appeal responses to another organization. The General Counsel suggested that eliminating second searches during the processing of appeals, which he stated were not required by law, would expedite the process.

There was general agreement that the Agency should be in a position to demonstrate to the courts and to the Congress that every reasonable effort had been made to comply with the response deadlines stipulated by law. The proposed request for a supplemental appropriation for positions and funds for FOI/PA administration was discussed briefly, as was the possibility of diverting systematic review personnel to FOI/PA work.

Proposal No. 1: That FOIA/PA processing methods be streamlined whenever this can be done without undue risk. Specifically, agency components should look into the various levels of review they currently employ and eliminate any that are not deemed essential to the protection of intelligence sources and methods.

APPROVED: _____

Deputy Director of Central Intelligence

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Proposal No. 2: That, with the approval of OGC, a separate queue should be established for massive requests in order that manpower can be freed to work on less complex requests submitted at a later date, thereby reducing the total number of unanswered requests. The basis for placing requests in the new queue should be the number of pages that require review. This figure should be determined by the DDO and concurred in by OGC.

APPROVED: _____
Deputy Director of Central Intelligence

DISAPPROVED: _____
Deputy Director of Central Intelligence

DATE: _____

Proposal No. 3: That OGC should take measures to ensure that responses to appeals are drafted promptly upon completion of the action components' reviews, including, if necessary, the addition of new paralegal personnel to OGC's staff. If the problem persists, consideration should be given to assigning responsibility for the preparation of appeal letters to another component, with the understanding that OGC will be consulted whenever appropriate.

APPROVED: _____
Deputy Director of Central Intelligence

DISAPPROVED: _____
Deputy Director of Central Intelligence

DATE: _____

Proposal No. 4: That the Agency should submit a request to the Congress, through the Office of Management and Budget, for a supplemental appropriation authorizing sufficient positions and funds to facilitate reduction of the processing backlogs and to enable the Agency to respond to requests in a more timely manner.

APPROVED: _____
Deputy Director of Central Intelligence

DISAPPROVED: _____
Deputy Director of Central Intelligence

DATE: _____

Proposal No. 5: That future Agency budget submissions should provide for enough FOI/PA positions to accommodate all employees who are, in fact, devoting 100 percent of their time to FOI/PA processing.

APPROVED: _____
Deputy Director of Central Intelligence

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Deputy Director of Central Intelligence

DATE: _____

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Management Issue #6: What must CIA do to adequately comply with statutory requirements concerning records control, review, and public disclosure without significantly impeding performance of its primary missions?

I. SUMMARY STATEMENT:

To date, the manpower allocated to the systematic classification review of 20-year-old records and to the processing of requests for access to records has been insufficient to permit the Agency to comply with legal requirements of Executive Order 12065. We estimate that, at the current rate, less than one-third of the systematic review workload will be accomplished by 1 December 1988, the date on which, according to the Order, federal agencies are to catch up to the 20-year review timetable. It is more difficult to predict the FOI/PA request-processing workload through the next 5-7 years because of the many unknowns; however, our best estimate is that the already sizable processing backlogs, particularly the one for initial requests, will inevitably grow and the time required for response will lengthen unless additional manpower is committed or the operation can be made more efficient.

Prospects for solution of the systematic classification review problem may be good. We understand that in October 1980 the General Accounting Office will issue a study recommending that the National Security Council amend the Order to eliminate the systematic review requirement. This recommendation will meet with strong opposition, of course, but, when the National Security Council takes up the matter, a persuasive case can be made for at least exempting intelligence records.

The other aspect of this issue, handling FOI/PA requests from members of the public, does not lend itself to easy solutions. The rational answer, total exemption from the Freedom of Information Act, is not politically feasible, and the Justice Department amendments which have yet to be formally proposed, while helpful, would not fully solve our resource problem. Sufficient positions should be included in the CIA budget to provide slots, at the minimum, for the personnel currently employed in the program, and consideration should be given to augmenting their number, taking into account the availability of qualified personnel and the effect on other Agency activities. At the same time, the processing procedures currently utilized by the Agency should be thoroughly studied to determine whether the system could be made more efficient without undue risk to intelligence sources and methods.

Although these two problems are closely related, for ease of presentation they have been treated separately in this paper.

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A. Systematic Classification Review

II. BACKGROUND

Executive Order 11652, which took effect 1 June 1972, stipulated that all classified records must be systematically reviewed for declassification by the time that they attain 30 years of age, and, unless the head of the department or agency personally determines in writing the need for them to retain their classification, that the records be declassified. It was superseded on 1 December 1978 by Executive Order 12065, which limited systematic review to permanent records but required that these records be reviewed for declassification by the time that they became 20 years old. Foreign government information, however, did not have to be reviewed until 30 years from its date of origin. Agencies were directed to complete the transition from 30-year review to 20-year review within 10 years from the effective date of the Order (i.e., by 1 December 1988). The heads of agencies could extend the classification of records for no more than 10 years, unless exceptions were granted by the Director of the Information Security Oversight Office (ISOO), at which time the records would have to be reviewed for declassification once again. (The Director of ISOO, in October 1979, waived the 10-year review requirement for six categories of intelligence data. Records covered by this waiver need not be re-reviewed until 30 years after the initial review.)

The then Special Assistant to the Executive Director for Information Control (SAIC) was assigned responsibility for coordinating the Agency's initial systematic review program. A three-man team of CIA annuitants, independent contractors employed by the DDO, was assembled in December 1972 and commenced the review of certain OSS records held by the National Archives and Records Service (NARS), principally the approximately 1,000 cubic feet of Research and Analysis Branch records (Record Group 226) deposited at NARS by the Department of State. This task was essentially completed by September 1974, and the OSS review team, which eventually expanded to include as many as 15 reviewers, turned its attention to the OSS records in CIA's custody. During 1973-74, arrangements were also made for the review by staff personnel of OSS motion picture films and maps held by the Agency, and, upon the completion of these projects, the declassified records were offered to the National Archives for accessioning.

~~CONFIDENTIAL~~Systematic Classification Review (cont.)

The task of systematically reviewing 30-year-old CIG and CIA records was not addressed until late-1976. The question of whether the program should be centralized or decentralized was decided on 1 March 1977 by the Agency's Executive Advisory Group, which opted for the former approach. An action plan was signed by the DDCI on 2 May 1977 establishing the Records Review Branch within the Information Systems and Analysis Staff of the DDA (the predecessor of today's Classification Review Division, Office of Information Services--CRD/OIS). By the end of 1977, the new unit was staffed, guidelines had been developed, and the review of CIG/CIA records commenced, with the first records formally declassified on 18 November 1977.

III. CURRENT SITUATION

The OSS review team, now a component of CRD, currently consists of 14 independent contractors, each of whom works 20 hours per week. CRD has an additional [] STAT full-time positions, plus seven contract employees (whose work hours range from 40 hours per week to 21 hours per week) and one independent contractor (who works as needed on a special project). The estimated personnel costs from FY 1973 through FY 1980 amount to approximately [] 25X1 [] for FY 1980 alone. The projected personnel costs from FY 1973 through FY 1988, based upon a 5 percent inflation factor, have been estimated at close to [] 25X1

By 31 August 1980, the OSS review team had completed the review of 1,437 cubic feet (2,874,000 pages, based upon an average of 2,000 pages per cubic foot) of the remaining OSS records held by the Agency. The team has been able to declassify approximately 90 percent of these records. Some 1,871 cubic feet (3,742,000 pages) remain, but the production rate has improved to the point that it is now expected that the project will be completed in late-1982.

[] as of 31 August 1980, had completed the review of 1,200 cubic feet (2,400,000 pages) of permanent CIG/CIA records and the classification determinations have been recorded in DARE, an automated index. Of the material

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CONFIDENTIALSystematic Classification Review (cont.)

reviewed to date, approximately 15 percent overall has been declassified. It is difficult to determine precisely the remaining workload because of several unknowns--e.g., some boxes at the Records Center may not be full and some records now categorized as "permanent" may later be reappraised as "temporary"--but the best estimate is that another 22,080 cubic feet (44,160,000 pages) exist of permanent records which will be 20 years old by 1988, the year in which we are to catch up to the 20-year review cycle. The current rate of production in CRD is 5,120 pages per work-day, or, given the present staff, 1,280,000 pages per year. Projecting this through CY 1988, it appears that CRD will manage to complete less than 30 percent of the anticipated workload unless the staff is augmented.

There is one promising note, however. The Government Accounting Office (GAO), at the direction of the Congress, has made a study of the systematic classification review program and has concluded that it is not cost-effective. Not only, as in the case of the CIA, are significant numbers of records retaining their classification, but even when records can be declassified they are apt to be of little interest to researchers. A GAO report is scheduled for distribution in October 1980 which will recommend that the National Security Council (NSC) modify Executive Order 12065 to eliminate the requirement for systematic classification review. Researchers' needs, according to the GAO, can be met at less cost through mandatory classification review requests for specific documents.

IV. STATEMENT OF TRENDS AND FUTURE DEVELOPMENT OF THE ISSUE

The discussion that follows is based upon the assumptions listed below:

Assumption No. 1. That the OSS review team will complete the review of the remaining OSS records by late-1982, and that this portion of the systematic review workload can be disregarded in the remainder of this paper.

Assumption No. 2. That records reviews and revisions of records control schedules over the next 5-7 years will not substantially reduce the quantity of permanent CIG/CIA records (22,080 cubic feet/44,160,000 pages) that it is

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CONFIDENTIALSystematic Classification Review (cont.)

estimated must be reviewed by 1 December 1988 to be in full compliance with Executive Order 12065.

Assumption No. 3. That the current production rate of CRD (5,120 pages per day) cannot be significantly increased without an increase in staff.

Assumption No. 4. That no additional tasks will be assigned to CRD. (In addition to the systematic review, CRD is now responsible for such matters as reviewing manuscripts submitted to the Publication Review Board and galleys proposed for publication in the Department of State's Foreign Relations of the United States.)

It is estimated that to comply fully with Executive Order 12065, 44,057,600 pages of CIG/CIA material will have to be systematically reviewed during the period FY 1981 through 1 December 1988. If assumptions 2, 3, and 4 are valid, the equivalent of 32 full-time reviewers will be able to complete the review of only 1,280,000 pages each year. At this rate, only 27.4 percent of the records will have been reviewed by the end of FY 1988, and less than 30.2 percent by the end of FY 1989.

<u>End of Fiscal Year</u>	<u>Cumulative Total of Pages Reviewed</u>	<u>Remaining Workload</u>
1981	3,782,400	42,777,600
1982	5,062,400	41,497,600
1983	6,342,400	40,217,600
1984	7,622,400	38,937,600
1985	8,902,400	37,657,600
1986	10,182,400	36,377,600
1987	11,462,400	35,097,600
1988	12,742,400	33,817,600
1989	14,022,400	32,537,600

CRD has been authorized four new staff positions for FY 1981. If these positions are filled and retained throughout the period 1981-88, approximately 1,300,000 more pages of material can be reviewed, or an additional 3 percent of the total workload, during this time frame.

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~~CONFIDENTIAL~~Systematic Classification Review (cont.)

Beginning in FY 1988, the backlog would be exacerbated by the requirement that we perform the 10-year re-review of records initially reviewed in FY 1978, unless the records meet the criteria of ISOO's waiver letter of October 1979 and thus need not be re-reviewed until 30 years have elapsed. Additionally, in FY 1989 and the years following, many other classified CIA records will attain 20 years of age and be subject to systematic review. The volume of these records has not been estimated to date, but it is likely, because of the re-review requirement, that the total new workload will be considerably larger than now. Lacking more resources or some form of relief/exemption, the Agency will inevitably fall further and further behind the schedule established by the Order.

The impact upon the Agency during this period would depend upon future developments. Assuming that things continue as they are, the Agency will be unable to comply with the systematic review timetable of Executive Order 12065. Sooner or later, this would be pointed out by ISOO in its annual report. Criticism could be expected from both the private sector (ACLU, AHA, etc.) and public sector (ISOO, GAO, etc.) and, if the CIA is the only agency not in substantial compliance with the Order (which is improbable), the media might treat this as additional evidence of the CIA's disregard of the law. It seems unlikely, however, that legal sanctions against the Agency would ensue. The most undesirable consequence that might occur would be if the Congress, reacting to pressure from interested parties, enacted legislation governing classification/declassification.

If the Agency diverted the additional manpower to this program sufficient to meet the classification review schedule, and this manpower had to be taken from other activities, the Agency's ability to perform its basic intelligence mission would certainly be impaired.

On the other hand, if the NSC could be persuaded to amend the Order to eliminate the requirement of systematic review, the problem would disappear and the resources currently committed to this program could be used for other purposes.

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Systematic Classification Review (cont.)V. PROBLEM STATEMENT:

Executive Order 12065 requires that all classified permanent records be reviewed for declassification by the time that they attain 20 years of age, with the exception of foreign government information, which need not be reviewed until it becomes 30 years old. Federal agencies were given 10 years, i.e., until 1 December 1988, to comply with this schedule. It appears, however, that at the present rate the Agency will have completed the review of no more than 30 percent of its permanent, classified, 20-year-old records for the period 1946-68 by 1 December 1988. The problem is to determine whether it is possible for the CIA to meet the systematic review requirement of Executive Order 12065 without unduly taxing its manpower resources or impairing the Agency's ability to perform its foreign intelligence mission.

VI. ALTERNATIVE COURSES OF ACTION:

Resource Assumption No. 1. That there will be no resource growth for the next 5-7 years.

Option No. 1. Make a concerted effort to persuade the NSC to amend Executive Order 12065, eliminating the provision for systematic review of permanent records. It would be to our advantage if consideration of the GAO's recommendation could be deferred until after the November election inasmuch as the administration would then be less concerned with the predictable opposition of such interested groups as the various associations of historians. If the NSC proves to be unwilling to discontinue the government-wide systematic review program, we should then press for the exemption of intelligence records, pointing out that it is unlikely that we will be declassifying more than 15-20 percent of our records overall and not more than 5 percent of our sensitive operational records. Obviously, there would be no systematic review problem if the legal requirement were to be eliminated, and the Agency could then utilize the manpower currently committed to this work for other purposes. It is not anticipated that the FOI/PA request workload of the Agency would increase significantly as a consequence.

Option No. 2. Attempt to reduce the workload through the revision of records control schedules and the streamlining of systematic review procedures. Working closely with officials at NARS, we could try to reduce the volume of records appraised as permanent, thereby

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Systematic Classification Review (cont.)

lessening the systematic review workload. (This process is currently underway.) Moreover, with the approval of ISOO and the Archivist, arrangements might be made whereby the DCI could certify the need for specified categories of records to retain their classification beyond 20 years, as opposed to ruling on individual documents. (This has been successfully negotiated in the case of DDO raw intelligence information reports and cables.) To the degree that we were successful in these efforts, the number of records to be reviewed would be reduced. Whether the workload can be lightened to the point that the current work force could complete the review on schedule is problematical.

Option No. 3. Make no substantial change in Agency practice. This would mean that the Agency would complete less than 30 percent of the projected systematic review workload by 1 December 1988, and, in the ensuing years, would fall further and further behind. While the Agency might be subjected to criticism, our inability to comply with the Order would probably not lead to legal sanctions in the short run.

Resource Assumption No. 2. That additional resources will be available for allocation to the systematic review program over the next 5-7 years.

An increase of 10 percent in resources, i.e., the addition of [] more positions already authorized for FY 1981, would have little impact on the problem. We would still have a significant shortfall. The only benefit to the Agency would be that the attempt to augment the work force would provide further evidence that we had made a sincere effort to comply with the Order's schedule.

Assuming once again that we have accurately projected the volume of records which must be reviewed and that the rate of production cannot be significantly improved, it would require approximately [] additional personnel) to complete the review of 44,057,600 pages of material by 1 December 1988. Even if the positions were available and sufficient work space could be located, however, it would undoubtedly be impossible to find [] persons with the requisite experience without severely impairing other, more essential, Agency activities.

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The legal requirements for responding to requests from members of the public for access to records are set forth in the Freedom of Information Act (5 USC 552), the Privacy Act (5 USC 552a), section 3-5 of Executive Order 12065, and the Agency's implementing rules and regulations. Privacy Act (PA) requests can be either for access to records pertaining to the requester or for the amendment or expungement of information contained in those records. To be eligible for the benefits of the PA, the requester must be a U.S. citizen or a permanent resident alien. Freedom of Information Act (FOIA) requests may be submitted by any person, regardless of nationality, and can concern any topic. Executive Order 12065 (EO) authorizes any person, or another federal agency, to request the mandatory classification review of classified records. The laws specify categories of information that are exempted from disclosure, but, when feasible, nonexempt portions of documents must be released. Failure on the part of an agency to release requested records, or to act upon requests within the time limits specified by law, can lead to administrative appeals or, in the case of FOIA and PA requests, litigation.

In the past, management's attention has been primarily focused on the "perception" problem that has arisen in connection with FOI/PA requests--i.e., the mistaken belief held by others that the CIA can no longer protect secrets. This paper addresses the administrative burden and the likely consequences of our growing processing backlogs.

The FOIA had little impact upon the Agency until sweeping amendments were enacted in December 1974, which became effective 19 February 1975. (The PA was also enacted in December 1974, taking effect on 27 September 1975.) The only appreciable pre-1975 request activity affecting the Agency arose from the mandatory classification review provisions of Executive Order 11652. Even that was insignificant in terms of today's request volume. Between 1 June 1972 (when Executive Order 11652 was implemented) and the start of 1975, only 331 EO requests were received. Requests did not arrive in great volume until mid-1975. Around that time, the media began devoting attention to allegations of improper domestic activities by the CIA. In particular, publicity was given to the fact that the Agency had maintained records on Congresswoman Bella Abzug, including intercepted letters. Before long, organized campaigns resulted in the Agency being inundated with form letter requests for personal records, and, by the end of 1975, the Agency had logged a total of 7,393 requests, the majority of them

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FOI/PA Backlogs (cont.)

being requests for personal records. We succeeded in closing out 5,859 of these requests during 1975--a high percentage resulted in "no record" responses--but we carried a backlog of over 1,500 requests into 1976. With the single exception of 1976, that backlog of initial requests has grown each ensuing year. (See Part VII, Tab B, for workload/production statistics on initial requests, appeals, and litigation.)

The manpower resources allocated to FOI/PA processing have steadily increased through the years. The figures reported to the Congress were as follows:

<u>Year</u>	<u>Man-Years*</u>	<u>Salaries</u>
1975		
1976		
1977		
1978		
1979		

25X1

Although the manpower devoted to FOI/PA processing has increased over the years, whereas the number of new requests/appeals/litigations received has either leveled off or declined, the total workload facing the Agency has grown and the time required for responses has lengthened. A lack of efficiency may be part of the answer, but other factors are present, such as:

- a. Simple requests (e.g., "no record" replies, copies of previously released records, etc.) are answered relatively promptly, whereas the more difficult cases tend to be carried over from year to year in the backlog.

*The above figures are based upon weekly reports submitted to IPD by the components and they are known, in some instances, to be incomplete. The totals for 1975, for example, did not include work on PA requests and did not take into account nonwork days, i.e., holidays and leave. The apparent drop in 1979 resulted from a misunderstanding which caused a major Agency component to discontinue the reporting of man-hours expended by persons who did not work full time on FOI/PA. (We will cover this in our report to the Congress for CY 1980.) Moreover, such costs as supplies, equipment rentals, computer support, etc., have never been calculated.

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FOI/PA Backlogs (cont.)

- b. Many of our recent requesters (e.g., lawyers for corporations) are more sophisticated than earlier requesters, and the requests they submit are often complex and time-consuming to process.
- c. The backlog "mix" has changed, with a greater proportion of appeals and litigation cases. Cases that get into court are particularly demanding because of the need to answer interrogatories, prepare indexes, etc., and, when court-imposed deadlines must be met, work on initial requests and appeals suffers.
- d. The first-in, first-out policy dictated by the Open America case results in relatively uncomplicated requests being stalled in heavily backlogged components (viz., the DDO) while voluminous requests received at an earlier date are being processed. (To partially counteract this, the DDO recently established a separate queue for document referrals from other agencies. This procedural change has not been in effect long enough to have a significant impact on the backlog, however.)
- e. In the DDO, where the FOI/PA staff has been recently enlarged, experienced FOI/PA personnel have been diverted from processing chores to train new personnel and to check their work. Productivity suffers until the new personnel gain experience.
- f. Concern over the possibility of inadvertently disclosing sensitive information, particularly in the DDO, has lead to the establishment of multiple reviews of the same record, slowing up the process.

As a result of the developments enumerated above, plus the decentralized nature of our files and the sensitivity of the information we hold, the CIA has gained the reputation of being the slowest agency in the government in responding to requests. The reputation is probably deserved. A recent study of 9,308 cases revealed that our response times ranged from the same day to as much as 1,568 days from receipt of request (over 4 years).

~~CONFIDENTIAL~~FOI/PA Backlogs (cont.)III. CURRENT SITUATION

STAT The Agency currently has [] full-time staff employees STAT
 STAT -who work exclusively on FOI/PA matters. In addition,
 there are [] part-time staff personnel and 40 part-time
 contract employees, each of whom works on FOI/PA 30 hours
 per week. This would equate to [] full-time employees. STAT
 Taking into account other personnel who are involved in
 FOI/PA processing but have other duties as well, the
 Agency thus far in CY 1980 has been devoting the equiva-
 lent of [] full-time employees to the processing of
 FOI/PA requests, appeals, and litigation. The Agency's
 budgets for FY 1980 and FY 1981 contained no provision for
 FOI/PA slots. The Congress restored [] positions to the STAT
 FY 1980 budget, however, and is expected to do so for the
 FY 1981 budget. The FY 1982 budget, which will soon be
 submitted, will provide for [] FOI/PA positions. It is STAT
 also tentatively planned to ask the Congress for a supple-
 mental appropriation for [] additional FOI/PA positions STAT
 for FY 1981, although it is anticipated that this initia-
 tive may be killed by the Office of Management and Budget
 (OMB).

As of 10 September 1980, the Agency was faced with
 backlogs of 2,949 initial requests, 393 administrative
 appeals, and 89 court cases. The average number of ini-
 tial requests closed out per week by the Agency has de-
 clined each year, from a high of 112.7 requests per week
 in 1975 to a low of 51.5 for the current year. The compo-
 nent with the largest backlogs, the DDO, is contributing
 over 50 percent of the manpower Agency-wide. Some of the
 factors responsible for slowing down DDO processing have
 been discussed in the preceding section. Since all Agency
 processing must be completed before a case can be closed,
 and the DDO is involved in the majority of all requests
 (at least 70 percent), response times are more often than
 not keyed to the DDO's FOI/PA operation. The DDO is also
 involved in a high percentage of all appeals and litiga-
 tions, although it appears that the OGC has been a major
 bottleneck on appeals. (Some 90 appeal cases, at last
 report, were awaiting OGC action. Inasmuch as OGC must
 give priority treatment to litigation, appeals suffer.)

Increasing litigation demands, in particular, have
 had a definite impact on the processing of both appeals
 and initial requests within the DDO. Some recent court
 cases involve a large volume of DDO records: the Agee
 (10,000 documents), [] (3,375 documents), [] 25X1
 (2,800 documents), and [] (1,500 documents) cases are
 examples. During the first eight months of 1980, 62 per-
 cent of the manpower available in the DDO's Appeals and

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~~CONFIDENTIAL~~FOI/PA Backlogs (cont.)

25X1 Litigation Branch (8 man-years) was allocated to litigation. Moreover, in order to meet court deadlines, it was necessary to divert the equivalent of 6.1 man-years from the DDO [] to help out on litigation, thereby slowing down initial processing.

It should also be noted that initial processing of cases in the DDO is now more thorough than formerly. Essentially, initial cases are being processed in the same manner as appeals. While this practice will eventually pay dividends in coping with appeals and litigation, it does tend to slow up the completion of action on initial requests.

The Agency processes on a first-in, first-out basis. This does not mean, however, that every request is answered before those received at a later date. Each component processes requests in the order in which they are received, and, if no backlog exists, a request will receive immediate attention. Some requests can therefore be answered quickly. The first-in, first-out policy is followed to enable the Agency to seek, via an Open America motion, a stay from the trial court to allow the administrative processing to continue in those cases where suit is brought over our failure to respond within the statutory deadline. In order to prevail, the Agency must establish that it is proceeding with its FOI/PA workload with due diligence and that the inability to respond within the statutorily established time period is not the result of neglect or unjustified failure to allocate sufficient manpower. It is noteworthy that, in a recent case, the plaintiff, Justin Simon, is directly challenging our due diligence argument on the grounds that the Agency has failed to request appropriations from the Congress sufficient to enable the CIA to cope with its FOI/PA workload.

We are advised by OLC that the prospects for obtaining legislative relief from the FOIA are nil as far as the 96th Congress is concerned. Our best hope rests with the amendments to be put forward by the Department of Justice. It is difficult at this time to assess the impact of these amendments, if enacted, upon our FOI/PA workload. It is doubtful, however whether the work would be lessened by more than 10 percent. (The amendments, of course, would not affect PA or EO requests, which together comprise almost 60 percent of the total requests received.)

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CONFIDENTIALFOI/PA Backlogs (cont.)**IV. STATEMENT OF TRENDS AND FUTURE DEVELOPMENT OF THE ISSUE**

The discussion of trends and future developments is based upon the following assumptions:

Assumption No. 1. That the Agency's FOI/PA program will continue to be decentralized.

Assumption No. 2. That the manpower resources available today will remain constant throughout the next 5-7 years.

Assumption No. 3. That the productivity of the DDO's FOI/PA unit will increase as new employees acquire experience.

Assumption No. 4. That the number of new requests over the next few years will approximate that experienced during the past two years, i.e., 3100-3200 requests per year.

Assumption No. 5. That government-wide fee waiver criteria, more liberal than those applied by the Agency, will not be imposed.

It is difficult, perhaps even impossible, to predict accurately the Agency's FOI/PA workload through FY 1981, let alone FY 1988. We have no control over the number of requests submitted or the number of requesters who will eventually file administrative appeals or resort to the courts. A quick perusal of the statistical tables at Part VII, Tab B, reveals no long-range trends. Moreover, in a sense, these numbers are meaningless since not all requests require the same amount of manpower to process. A request could involve just the review of a single document referred to us by another agency, or, at the other extreme, tens of thousands of documents. (For example, a pending request for access to records on MIAs in Southeast Asia will require the review of approximately 30,000 DDO reports.)

An earlier attempt was made by the Management and Assessment Staff of the DDA to model the FOI/PA process. In a report published in December 1978, it was projected that the initial request backlog would increase at the rate of 91 cases a month (1,092 per year) and the appeals backlog by 12 cases a month (144 per year). Further, it was projected that by September 1981 the system would be so glutted that the available manpower would only be able

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to respond to "no record" cases. Fortunately, the volume of new requests has been lower than was foreseen, and it appears that the gloomy prognostications of this study will not totally come to pass.

During CY 1979, the Agency was able to complete action on an average of 59.3 requests per week. Thus far in CY 1980, however, despite a significant increase in the manpower employed on FOI/PA processing in the DDO, the average weekly completion rate dropped to 51.5. We are assuming that productivity in the DDO will improve in the near future, and that, as a consequence, the Agency's weekly average for completed cases in the coming years will equal or at least approach that of CY 1979. If this assumption is valid, and the number of new requests each year falls into the 3,100-3,200 range, then the initial requests backlog should grow by no more than 100 cases each year. At this rate, the backlog of unanswered initial requests would be in the neighborhood of 3,750 cases by the end of FY 1988. The average time required for response, however, will gradually lengthen.

The number of appeals filed in CY 1980 seems to be declining significantly (56 percent) from CY 1979. The appeals backlog has decreased slightly, and we understand that action on numerous cases is close to completion. Our educated guess is that the processing backlog will be no larger than 400 cases by the end of FY 1988. Litigation demands may preclude any substantial reduction of the backlog.

The number of FOI/PA suits brought against the Agency during CY 1980, on the other hand, is running 27 percent above CY 1979, many of them based upon our failure to respond in a timely manner. A larger proportion of the total available manpower will probably be required for FOI/PA litigation during the coming years. The backlog of court cases, now 89, will undoubtedly grow. It should be noted that, even when the court grants an Open America motion for a stay, the judge usually requires that the case be completed within a finite and specific time period.

Congressional action could also affect the FOI/PA workload. If the FOIA is eventually amended to include the (b)(10) exemption proposed by Justice, information certified by the DCI to be intelligence obtained from a person or organization not employed by the U.S. government, or which tends to identify a source or potential source, or which concerns the design or use of scientific

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FOI/PA Backlogs (cont.)

or technical collection systems would be (with two exceptions) exempt from disclosure. The certification would not be subject to judicial review. This would not only reduce the amount of sanitizing that is required, but would also simplify the handling of court cases. Indeed, it might well deter persons in the future from bringing suit. It would probably not apply, however, to ongoing litigation, and whether this relief would apply to requests/appeals already received is also questionable.

The Congress has also been under some pressure to clarify and standardize the matter of fees. It has been proposed by some quarters that agencies be required to waive fees for requests under certain circumstances, such as requests from nonprofit organizations. If this were done, the Agency would undoubtedly receive more requests than anticipated. Because of our decentralized systems of records, search costs are high and, to date, this has been a major restraint on requesters. From the start of CY 1980 through 10 September, for example, 264 FOIA requests were either canceled or withdrawn, usually because the requester was not prepared to pay the estimated charges.

The principal impact of FOI/PA on the Agency today is the diversion of over 100 employees to activities totally unrelated--some would say inimical--to its basic intelligence mission. Despite this resource expenditure, the CIA's inability to comply with response deadlines has caused its public image to suffer. Not a day goes by that IPD does not receive telephone calls or letters from angry, frustrated requesters who fail to understand why an intelligence agency, presumably geared to act immediately in time of national crisis, requires two or more years to locate records and review them for release. Some charge that the Agency is deliberately delaying, to hide misdeeds, while awaiting legislative relief. Others levy charges of inefficiency. (See Part VII, Tab C, for a representative statement of our critics' views.)

There is a remote possibility that complaints could lead the Congress to demand that the Agency clean up the request backlog and get into a posture where most requests could be answered in a timely manner, as was done with the FBI. The FBI, in 1977, as a result of hearings before its oversight subcommittee in the House, assigned 282 special agents, drawn from various field divisions, to FBI Headquarters to work on the FOI/PA backlog. This operation, dubbed "Project Onslaught," lasted for five months. At the same time, the permanent FOI/PA staff was nearly doubled in size. Although Project Onslaught resulted in

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FOI/PA Backlogs (cont.)

wiping out most of the FBI's backlog, it also resulted in the release of a considerable amount of sensitive data inadvertently. If the CIA were faced with the same demand, the problems involved in assembling and training a special work force and finding suitable office space would be enormous, not to mention the impact that this would have on other, more important activities. Moreover, inexperience and haste could lead to the inadvertent disclosure of sensitive data, as occurred in the FBI.

The Agency's FOI/PA problems could also lead to confrontations with the judiciary. The FOIA calls for judges to refer to the Office of Personnel Management (OPM) any instances where agency personnel are suspected of having acted in an arbitrary or capricious manner. OPM must then investigate the matter and, if the charges are substantiated, recommend disciplinary action against the employee(s) to the administrative authority of the agency concerned. (This was done on only one occasion, and no disciplinary action was recommended by OPM inasmuch as it was unable to pinpoint responsibility.) Another possibility is that, if the CIA failed to meet a court deadline for the production of records, a judge could order the release of the disputed records. Absent an immediate appeal, failure to do so could result in a contempt citation for a CIA official. Indeed, a judge could conceivably order the Agency to allocate additional manpower to FOI/PA processing, and find CIA officials in contempt if they failed to act.

In summary, the CIA is currently the slowest agency to respond to FOI/PA requests despite a current manpower commitment of over 140 man-years per year. The situation is expected to worsen somewhat in the years to come unless remedial action is taken. In the meantime, requesters are unhappy and taking their complaints to the Congress and the courts.

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~~CONFIDENTIAL~~FOI/PA Backlogs (cont.)V. PROBLEM STATEMENT:

Because of the volume of requests received, the complexity of our systems of records, and the sensitive nature of the information held by the Agency, the CIA is rarely able to meet the response deadlines for FOIA, PA, and EO requests. Processing backlogs for initial requests, administrative appeals, and litigation have steadily grown and the times required for replies have lengthened, sometimes taking as long as 4 years. Increasingly, requesters, understandably irritated by the delays, have invoked their right to appeal or bring suit for nonresponse. The manpower required to meet court deadlines tends to divert resources from the processing of initial requests and appeals, thereby further slowing our responses and creating conditions which lead to still more court suits. Although the Agency is currently devoting the equivalent of 143 full-time employees to this program and has the equivalent of 102 full-time staff and contract employees working exclusively on FOI/PA matters, there have never been provisions for more than [] FOI/PA positions in the CIA budget. The situation, which is bad today, will only worsen in the years to come unless the operation can be made more efficient or additional manpower can be allocated to the program. The problem is to determine how processing can be streamlined without diminution of our ability to protect intelligence sources and methods, or, alternatively, how additional personnel with the requisite experience can be allocated to FOI/PA processing without impairment of the Agency's ability to carry out its basic missions. STAT

VI. ALTERNATIVE COURSE OF ACTION:

Resource Assumption No. 1. That there will be no resource growth for the next 5-7 years.

Option No. 1. Conduct a study of the Agency's FOI/PA procedures in an effort to determine whether request processing could be speeded up without jeopardizing intelligence sources and methods. The last such study was done by the Management and Assessment Staff of the DDA. Its report, published in December 1978, was considered by the IRC Working Group, and a few changes were made in existing procedures and responsibilities. However, some of the other recommendations/questions of this report and other studies warrant further consideration. For example:

- One step that would help to reduce the backlog in initial requests would be to establish a separate

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queue for requests involving a large quantity of records, as is done in the FBI. The simpler FOI/PA cases could then be answered while earlier requesters who had asked for large numbers of documents were required to wait until the other voluminous requests received before theirs had been processed.

- The question of the number of times a document should be reviewed should also be examined, and perhaps the current procedures could be streamlined without unacceptable risk.
- With respect to appeals, increased processing time is being occasioned by the backlog in OGC. The services of paralegal personnel are necessarily being diverted from appeal processing because of significant and expanding litigation demands. A moderate increase in personnel (2-4 full-time positions) would significantly improve productivity and should be considered.
- It has been suggested that the workload for the Agency might be reduced if IPD were to increase its contacts with requesters telephonically to assist them in narrowing the scope of their requests.

The foregoing are merely illustrative of measures that could be considered to improve efficiency and to expedite processing.

Option No. 2. Seek a total exemption from the FOIA, PA, and the mandatory classification review provisions of Executive Order 12065. While this would eliminate the problem, there appears to be no possibility of success.

Option No. 3. Make no substantial change in current Agency practice. This would probably result in the further growth of our backlogs and in a gradual lengthening of the time required for responses. When challenged in the courts, the Agency's defense would continue to be that it is devoting as much manpower to FOI/PA processing as can be spared and that, to be fair to all, requests are handled on a first-in, first-out basis, in accordance with the principles established in the Open America case. In order to prevail before the courts, it is essential that the Agency be able to establish that the backlog problem

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has not resulted from neglect or unjustified failure to allocate sufficient manpower. In this context, it would probably be helpful if the CIA budget carried provisions for at least enough positions to accommodate all of the personnel currently employed on a full-time basis in FOI/PA processing.

Resource Assumption No. 2. That additional resources will be available for allocation to FOI/PA processing over the next 5-7 years.

STAT We could seek a supplemental appropriation from the Congress to enable us to eliminate, or at least substantially reduce, the initial request processing backlog. A preliminary study indicates that we would need positions for [] additional staff employees, plus sufficient funds to cover the acquisition of office space and other overhead costs. In addition, it is proposed that we ask for \$500,000 to cover overtime expenditures in the DDO. The additional positions would be distributed among the DDO, IPD, OS, and NFAC. Once the backlog has been reduced, then it would probably be possible to respond to requests in a timely manner with a somewhat lesser commitment of manpower.

Even if the Congress should act favorably on this proposal--assuming that it would be cleared by OMB--it is questionable whether we could obtain the services of persons with sufficient experience to entrust with the review of sensitive information without, at the same time, adversely affecting the ability of the Agency to carry out its basic mission. One potential source of manpower is the annuitant pool, which we are already tapping. Another source would be the personnel who are currently involved in the systematic review program, assuming that prospects are good for amending Executive Order 12065 to eliminate this requirement.

Regardless of whether a request for additional positions and funds would be approved, or whether, if approved, we could fill the positions with persons having the desired background and experience, the fact that the Agency had made a sincere effort to expedite its FOI/PA processing through additional manpower would place us in a more secure legal posture before the courts. While we have brought to the attention of the Congress the workload imposed by the FOI/PA program, we have to date neither specifically

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requested additional appropriations in order to respond to the requests nor taken action similar to the FBI in temporarily assigning teams of professional employees in order to accomplish the work.

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VII. ATTACHMENTS:

Tab A - Issue Team Members

Tab B - FOI/PA Workload/Production Statistics

Tab C - Statement of the Director, Freedom of Information Clearinghouse, Before the Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs, U.S. Senate, 19 August 1980.

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FOI/PA Workload/Production Statistics¹

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	(thru 9/10)
<u>Initial Requests</u>							
Requests received	7393	3491	4843	4172	3122	2154	<u>Totals</u> 25175
Cases closed ²	5859	3813	3706	3617	3086	1854	21935
<u>Administrative Appeals</u>							
Appeals received	303	276	185	160	226	68	1218
Appeals closed ²	178	155	139	73	133	89	628
<u>Litigation</u>							
Cases filed ³	29	31	20	27	25	22	154
Cases closed	2	6	21	24	11	3	67

¹These are end-of-year statistics. Inasmuch as cases may be closed or reopened retroactively, the size of the backlog cannot be derived by subtracting cases closed from requests received. In addition, a number of cases have shifted to the appeal stage, or from the appeal stage to litigation, without being accounted for in these statistics. The backlogs as of 10 September 1980 were 2,949 initial cases, 393 appeals and 89 court cases.

²Requests/appeals going into the appeal or litigation stages owing to our failure to respond are now treated as "closed" cases. This practice was not followed in the early years, however, and a number of cases included as open requests or appeals in the tables above have in fact been closed.

³Litigation "cases" do not necessarily equate to FOI/PA "requests." For example, a recent suit brought by the Center for National Security Studies involves 12 FOI/PA requests/appeals. Two FOIA suits, both closed, concerning the waiver of fees are not included in the above totals.